

1 NANCY L. ABELL (SB# 088785)  
2 [nancyabell@paulhastings.com](mailto:nancyabell@paulhastings.com)  
3 PAUL, HASTINGS, JANOFSKY & WALKER LLP  
4 515 South Flower Street, Twenty-Fifth Floor  
5 Los Angeles, CA 90071-2228  
6 Telephone: (213) 683-6000  
7 Facsimile: (213) 627-0705

8 Attorneys for Defendant  
9 GALLO GLASS COMPANY

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 LARRY BOECKEN, JR.,

13 Plaintiff,

14 v.

15 GALLO GLASS COMPANY, and  
16 DOES 1 THROUGH 50,  
17 INCLUSIVE,

18 Defendant.

CASE NO. 1:05-CV-00090 OWW DLB

**STIPULATION AND ORDER TO VACATE  
JUNE 15, 2011 SETTLEMENT CONFERENCE  
BEFORE MAGISTRATE JUDGE BECK AND  
TO REQUIRE THE PARTIES TO INFORM  
THE COURT WHEN THE BANKRUPTCY  
TRUSTEE HAS ACTED ON THE REOPENING  
OF PLAINTIFF BOECKEN'S CHAPTER 7  
BANKRUPTCY**

Judge: Hon. Oliver W. Wanger

**BACKGROUND**

1. This action was filed in 2004.

2. On August 21, 2008, Plaintiff Larry Boecken, Jr., filed a Voluntary Petition for bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Case No. 08-15050-B-7. He did not list this lawsuit as an asset on the schedules he filed with the Bankruptcy Court. On or about December 30, 2008, the United States Bankruptcy Court granted Plaintiff a discharge under section 727 of title 11, United States Code. On May 5, 2011, new counsel for Defendant Gallo Glass Company, Nancy L. Abell, apprised Plaintiff's counsel of these facts, promptly following her discovery of them at the time she was retained as counsel. Plaintiff's counsel advises the Court that it was unaware of Plaintiff's bankruptcy proceeding until Ms. Abell brought it to counsel's attention.

3. Defendant submits that (i) Plaintiff's claims are the property of the bankruptcy estate; (ii) Plaintiff has no standing to pursue them in this Court for any purpose, including settlement at the scheduled June 15, 2011 settlement conference; and (iii) Plaintiff is judicially estopped from litigating this lawsuit.

4. On May 25, 2011, Plaintiff filed an application to reopen his Chapter 7 bankruptcy case, along with amended schedules listing this lawsuit as an asset omitted from his original filing.

5. On May 27, 2011, the United States Bankruptcy Court for the Eastern District of California reopened Plaintiff's Chapter 7 bankruptcy case, No. 08-15050-B-7, and ordered that the amended schedules be served on the U.S. Trustee within 30 days along with a declaration from Plaintiff Boecken explaining why the asset was omitted from the original schedules. That declaration has not yet been filed. The order further provides that the U.S. Trustee thereafter may have 30 days to appoint a Chapter 7 trustee if necessary to investigate and administer the omitted asset, namely this lawsuit.

**STIPULATION**

Therefore, the parties jointly request that this Court (i) vacate the June 15, 2011 settlement conference because no Chapter 7 trustee has yet been appointed, and (ii) order the parties to promptly inform the Court when the U.S. Trustee has acted on the reopening of Plaintiff Boecken's Chapter 7 bankruptcy so that the appropriate participants can be served with notice of, and required to participate in, a settlement conference in this case.

Dated: June 13, 2011

LAW OFFICES OF MINA L. RAMIREZ

By: /s/ Noah W. Kanter

Noah W. Kanter  
Counsel for Plaintiff  
Larry Boecken, Jr.

Dated: June 13, 2011

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: /s/ Nancy L. Abell

Nancy L. Abell  
Counsel for Defendant  
Gallo Glass Company

**ORDER**

IT IS SO ORDERED.

Dated: June 14, 2011

/s/ Dennis L. Beck

United States Magistrate Judge